

# FEDERAL FACILITIES

## ISSUE SUMMARY:

The Office of Land and Emergency Management's (OLEM) Federal Facilities Restoration and Reuse Office (FFRRO) manages national implementation of the Comprehensive Environmental Response, Compensation and Liability Act's (CERCLA, a.k.a., Superfund) remedial provisions for Federal Facilities (FF). Those provisions support the agency's mission to protect human health and the environment by cleaning up contaminated lands consistent with their intended land use. Using CERCLA authorities, EPA oversees long-term cleanups at sites conducted by other Federal agencies that are CERCLA responsible parties for releases at their facilities. FFRRO works closely with the Office of Enforcement and Compliance Assurance's Federal Facility Enforcement Office to support the 10 regional Federal Facilities programs.

FFRRO works with the U.S. Department of Defense (DoD), the Department of Energy (DOE), and other Federal agencies (OFAs) to facilitate protective, legally compliant and effective cleanups and reuses of Federal Facility sites in a timely manner. Federal Facility program resources are focused on National Priorities List (NPL) sites. EPA has listed 175 Federal Facilities as final to the NPL, with 17 of those deleted from the NPL. These 175 sites have 2,172 operable units (OUs), distinct areas at a site created to facilitate efficient site management and cleanup. While only about 10% of NPL sites are Federal Facilities, more than 40% of Superfund OUs are at Federal Facilities and they deliver nearly half of Superfund's program accomplishments each year, including decision documents and remedial action completions.

Additionally, FFRRO is responsible for managing the Federal Agency Hazardous Waste Compliance Docket (Docket). The Docket identifies all Federal Facilities that have had reportable releases and must be evaluated to determine if they pose enough risk to warrant inclusion on the NPL. The Docket currently has almost 2,400 sites. There is a large universe of non-NPL sites, and the states are typically the lead regulatory agency for those sites (see CERCLA Section 120(a)(4)). EPA is generally not involved with remediation at non-NPL Federal Facilities or non-NPL Federal agency-led sites.

Cleaning up contaminated sites at Federal Facility NPL sites can serve as a catalyst for economic growth and community revitalization. FFRRO facilitates the redevelopment of federal facility sites across the country by assisting OFAs to expedite activities related to CERCLA response actions, while protecting human health and the environment. Collaborative efforts among OFAs; developers; and state, local, and tribal partners encourage restoration of sites. Since Federal Facility Superfund sites often encompass thousands of acres with buildings, roads and other infrastructure, their effective and efficient cleanup and reuse can play a pivotal role in a community's economic growth. A 2020 EPA economic analysis identified over 2,000 businesses that generated \$11 billion in annual sales and provided over 189,000 jobs and \$14 billion in estimated annual employment income at 45 Federal Facility NPL Sites.

**Differences in Federal Facilities Work Compared to Private Sites.** Federal Facilities and private sites both follow the CERCLA process, CERCLA statute, National Contingency Plan (NCP) and associated EPA

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guidance documents and policies. Federal Facilities are also subject to CERCLA Section 120-specific requirements. EPA, coordinating with the state, provides oversight of the responsible party/other federal agency's work. Key differences between Federal Facilities and private NPL sites include:

- Numerous, Large, Complex Sites: Federal Facilities are generally much larger (average over 6,000 acres in size, DoD and DOE bases and former bases, dozens of OUs) and more complex due to prevalence of contaminants like per- and polyfluoroalkyl substances (PFAS) and munitions.
- Radiation: Radioactive waste is challenging due to large volumes and extremely long half-lives of radionuclides associated with the development of nuclear weapons. Currently, there is no way to treat radioactive waste to make it less radioactive; cleanup remedies rely on immobilization and isolation to prevent interaction with the environment. As a result, cleanup remedies rely on long-term institutional controls and stewardship. Radioactive contamination is more common at Federal Facilities. [non-public info: In addition to large DOE nuclear weapons cleanup sites requiring many more decades and over \$300 billion to address environmental liabilities, EPA oversees the controversial former Hunters Point Naval Shipyard site in San Francisco, CA. The site has begun property transfer for private reuse for residences and community resources, resides in Speaker Pelosi's district, has multibillion dollar litigation between the United States and Tetra Tech EC, Inc. over radiological environmental sample falsification, and [REDACTED]

[REDACTED]. There is a vocal community advocacy involved at the site and a lot of concerns by members of the Environmental Justice community, new homeowners in the redevelopment, and the San Francisco Bay Area at large. Speaker Pelosi's Chief of Staff receives routine briefings from EPA and the Navy on site status. The Navy has received significant budget increases to support the radiation sampling re-work. [REDACTED]

- [REDACTED]
- Large/Numerous Releases of Chemicals Impact Groundwater: Large volumes of chemical waste are often associated with Federal Facilities. Historical use of chemicals and disposal practices can pose threats to groundwater resources. This includes the use of the PFAS-containing firefighting foam. See *PFAS at Federal Facilities Sites* 1-page briefing paper for more details.
  - Munitions and Explosives of Concern: Millions of acres of former munitions ranges have been transferred from the military to communities or local entities for redevelopment. Environmental regulators overseeing response actions dealing with military munitions have independent authority and/or responsibility to evaluate the public safety and environmental aspects of these response actions. DoD uses various unique technologies to characterize munitions response sites, but these sites are subject to the same statutory and regulatory requirements as other sites. Former ranges or other sites contaminated with military munitions may potentially have soil, groundwater, and surface water contamination from munitions residues.

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**Enforcement Challenges and Opportunities.** Enforcement tools for Federal Facilities are limited because the Unitary Executive Theory prevents EPA from bringing civil judicial suits against other Executive Branch agencies in federal court. EPA cannot issue CERCLA Section 106/104(e)(5)(A) administrative orders to another federal agency without Department of Justice concurrence.

- EPA may need to use authorities under other statutes (e.g., Safe Drinking Water Act and the Resource Conservation and Recovery Act) to address imminent and substantial endangerment at Federal Facilities).
- EPA considers entering into a Federal Facility Agreement (FFA) at an NPL Federal Facility to be mandatory, from the CERCLA Section 120(e)(2) requirement to enter into an interagency agreement with the Administrator for the expeditious completion of all necessary remedial action at Federal Facilities on the NPL.
  - Executive Order 12580 delegates presidential CERCLA authorities to the heads of executive branch agencies for releases at facilities under their jurisdiction, custody, or control, and they serve as the lead agency. EPA is the “lead oversight agency” at federal facility NPL sites. This oversight includes partnering with states as co-regulators to ensure progress and protective cleanup solutions.
  - All Federal facility NPL sites have an FFA except the Army’s Redstone Arsenal in Alabama.
- Enforcement, particularly under CERCLA, is generally difficult and requires extensive consultation, which can make the process slow. Despite obstacles, EPA has assessed stipulated penalties, where they are appropriate to ensure that Federal facility cleanups are timely and protective.
- One major distinction between Federal Facility and private cleanup settlements is that, to date, there has been no cost recovery for EPA oversight costs except as provided in two FFAs signed at the start of the Federal facilities cleanup program.

**Other factors** that are unique to Federal Facilities:

- **Federal Facility Disputes and the EPA Administrator’s Role.** The FFA includes a procedural framework and schedule for site response actions and facilitates cooperation and exchange of information by the Parties to the agreement (EPA, the other federal agency and usually the state).
  - The FFA also includes a dispute resolution provision and process. Dispute items historically have encompassed disagreements over technical, policy and legal issues. The Administrator is the final arbiter of FFA disputes that are not resolved within the region. In general, there is language in the FFA committing the Federal agency to abide by the Administrator’s decision. There have been approximately 100 FFA formal disputes in 34 years, with 11 elevated to the Administrator for a decision. There is a dispute for the Oak Ridge ReservationDOE site recently resolved via

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decision by EPA Administrator Wheeler. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] See

“Federal Facility Agreement Disputes” briefing paper and “Oak Ridge Reservation” Transition Team briefing paper for more information.

- Resolution of site decisions via the dispute process is labor intensive and time consuming. While this tool is useful when needed, FFRRO and FFEO recognize it is not always an efficient approach. The two offices continue to work with the regions to use tools and approaches such as partnering principles and Alternative Dispute Resolution in coordination with the FFA parties to advance sites without initiating the dispute process and occasionally as part of the dispute process. Several EPA regions employ comprehensive and formal partnering (Tiered Partnering with DoD services and states; Core Team with DOE and states) to maintain progress and achieve site goals. Non-traditional approaches to resolve disagreements outside of the FFA dispute process and interagency peer-to-peer (i.e., parity) relationships can prove problematic.
- Remedy decisions require joint selection by EPA and the other federal agency (CERCLA Section 120(e)(4)). If there is a disagreement, EPA selects the remedy. The state may also concur on the remedy decision, but it is not required.
- Five-Year Reviews (FYRs) are part of the CERCLA process and provide an opportunity to review a remedy to ensure ongoing protectiveness. Other federal agencies are responsible for conducting FYRs at sites where required or appropriate, including any follow-up actions. If EPA disagrees with the other agency’s protectiveness statements, EPA can issue an independent finding.
- Budgets. Cumulative environmental cleanup budgets for the Other Federal Agencies (OFAs) exceeded \$8 billion in FY 2020. EPA requests a budget from Congress for Federal Facilities CERCLA oversight. EPA’s enacted FY 2020 budget for this oversight was \$21.125 million for program work and \$8.28 million for enforcement. [non-public: EPA requires additional funds and staff to fulfill our role in Federal Facilities oversight and ensure timely and sufficiently protective cleanups and reuse. For example, DoD PFAS cleanup will cause a surge in new Remedial Investigations/Feasibility Studies and cleanup decisions over the next 5-10 years with DoD receiving budget increases to perform this work. EPA requires a commensurate increase to ensure we can keep up with this work. EPA had pursued a multi-year funding proposal with OMB during initial formulation of the FY 2022 budget request for President Trump. Additionally, upcoming DoD munitions response work at NPL sites and DOE nuclear weapons site cleanups are expected to increase workload for EPA.]
- Relationships with Other Federal Agencies (OFAs). Typically, DoD and DOE have more challenging cleanup sites than the other OFAs (e.g., DOI, NASA, USDA), which can lead to more disagreements.

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The number of disputes can be attributed to the volume and complexity of DoD and DOE NPL cleanups; this sometimes results in entrenched positions on technical and policy issues.

- [non-public info: While OFAs are required under CERCLA 120 to follow EPA guidelines to the same extent as private Potentially Responsible Parties, and follow EPA guidance under FFAs at NPL sites, it is common for OFAs to interpret CERCLA, the National Contingency Plan regulation, and EPA policies and guidance differently than EPA. This causes delays at some sites that also waste EPA’s limited personnel time and funds.]
- [non-public info: Additionally, EPA has listed only 6 of the 175 Federal Facility sites to the NPL since 2000, while listing 316 non-federal sites (<https://www.epa.gov/superfund/national-priorities-list-npl-sites-listing-date>).

[REDACTED]

#### UPCOMING MILESTONES:

Superfund cleanup decisions estimated to cost more than \$50 million must be signed by the Administrator. Please refer to the “Administrator’s Emphasis List and CERCLA Decision >\$50 Million” Transition Team briefing paper.

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#### BACKGROUND:

CERCLA and the NCP established a national program to address uncontrolled hazardous waste releases. In part due to Federal agencies' lack of clarity on the applicability of CERCLA to their facilities, Congress included CERCLA Section 120 in the 1986 Superfund Amendments and Reauthorization Act (SARA).

#### KEY EXTERNAL STAKEHOLDERS:

☒ Congress      ☒ Industry      ☒ States      ☒ Tribes      ☒ Media      ☒ Other Federal Agency  
☒ NGO      ☒ Other (name of stakeholder) Site-Affected Communities

LEAD OFFICE: OLEM FFRRO// OTHER KEY OFFICES: OECA FFEO, SEMD REGIONS 1-10